IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11710 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMCHANDRA GANESHLAL KHATRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11710 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MS HANSA PUNANI, AGP for Respondent No. 1-3

Mr JITENDRA MALKAN for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/11/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. HR Prajapti for the

petitioner, ld. AGP Ms. HB Punani for District Magistrate and Mr. Jitendra Malkan, ld. Senior Central Government Standing Counsel for Union of India. Affidavits-in- reply tendered today on behalf of State of Gujarat as well as Union of India, are taken on record.

2. By this petition under Article 226 read with Articles 21, 22(5) of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 01.09.2004 passed against the petitioner by the District Magistrate, Surat, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act"). It is the say of the detaining authority that with a view to preventing the detenu from indulging in any criminal activities in any manner prejudicial to the maintenance of supply of essential commodities like blue kerosene, the petitioner has been detained.

3. I have considered number of grounds agitated by the petitioner in the memo of the petition and relevant papers produced. The allegations against the present petitioner, as per the grounds of detention supplied to him, are that he was found involved in so-called black-marketing of blue kerosene with one co-accused Kalpesh @ Lalo Ramchandra Samariya and as that Kalpesh was having registration/ permit to deal with the business of free-sale white kerosene, under the guise of that registration/permit, Kalpesh was involved in the black-marketing of blue kerosene required to be sold/distributed under "public distribution system" and the petitioner had abetted him.

4. Today, this Court, by detailed order, while dealing with Spl.Civil Application No. 11702/2004 filed by co-detenu Kalpesh @ Lalo Ramchandra Samariya against the order of detention passed against him, has allowed the said writ petition and quashed and set aside the order of detention passed against the co-accused Kalpesh @ Lalo Ramchandra Samariya, by placing reliance on two different decisions of this Court. So, adopting the reasons assigned by the Court in the said decision, on the ground of parity only and without entering into the merits of other grounds canvassed today by ld. counsel appearing for the petitioner, the order of detention passed against the petitioner requires to be quashed. It is rightly argued by ld. counsel Mr. Prajapati that the basic allegation even as per the grounds of detention served to the present petition is that only co-accused

Kalpesh was involved in such activities as he was holding registration and the status of the petitioner is shown as an abettor. Having considered the contents of the criminal complaint registered against the present petitioner along with co-accused, there is some force in the submission of ld. counsel Mr. Prajapati that the order of detention passed against the petitioner requires tobe quashed on the ground of parity only. It is neither the allegation nor the case of the detaining authority that irrespective of the activities of co-accused Kalpesh, the petitioner was competent enough and was dealing in the activities of black-marketing of blue kerosene available for public distribution. The subjective satisfaction recorded by the detaining authority, therefore, is found to be based on surmises and not on cogent material. So, adopting the reasons assigned by this Court in Spl.C.A. No.11702/2004 while quashing and setting aside the order of detention of co-accused Kalpesh @ Lalo, the order of detention passed against the present petitioner also requires to be quashed and set aside only on the ground of parity.

5. For the reasons aforesaid, the present petition is hereby allowed. Impugned order of detention dated 01.09.2004 passed by the District Magistrate, Surat against the petitioner detenu is hereby quashed and set aside and the petitioner detenu is hereby ordered to be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

Copy of the Oral Judgment passed by this Court in Spl.C.A. No. 11702/2004 decided today i.e. on 25.11.2004, be kept with the file of the present petition for the sake of convenience. Registry is directed accordingly.

[C.K. BUCH, J]

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